

NO. 83-131

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1982

LOUIE L. WAINWRIGHT, Secretary, Florida
Department of Offender Rehabilitation,
Petitioner,

v.

ARTHUR FREDERICK GOODE, III,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

WILBUR C. SMITH, III
SMITH & RINGSMUTH
Post Office Box 2446
Fort Myers, Florida 33902-2446
(813) 332-2686

COUNSEL FOR RESPONDENT

i.

QUESTIONS PRESENTED

I.

Where the trial judge's sentencing order plainly indicated that he had considered the mentally ill defendant's alleged future dangerousness as a reason for imposing the death penalty, did the court of appeals correctly conclude that the state supreme court's assertion to the contrary was not fairly supported by the record?

II.

Whether habeas corpus relief was properly granted where the record of respondent's state capital sentencing proceeding revealed that the sentencing judge had considered respondent's mental illness as an aggravating factor justifying imposition of a sentence of death, rather than as a mitigating circumstance?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
STATEMENT OF THE CASE	1
WHY THE WRIT SHOULD BE DENIED	5
CONCLUSION	13
CERTIFICATE OF SERVICE	14

TABLE OF CITATIONS

	Page
<u>Barclay v. Florida</u> , ___ U.S. ___, 77 L.Ed.2d 1134 (1983)	4,6,12,13
<u>Coker v. Georgia</u> , 433 U.S. 584, (1977)	11
<u>Cuyler v. Sullivan</u> , 446 U.S. 335, (1980)	7
<u>Eddings v. Oklahoma</u> , 455 U.S. 104 (1982)	12
<u>Enmund v. Florida</u> , ___ U.S. ___, 102 S.Ct. 3377 (1982)	11
<u>Gregg v. Georgia</u> , 428 U.S. 153, (1976)	11
<u>Goode v. State</u> , 365 So.2d 381, (Fla. 1978)	1
<u>Goode v. Wainwright</u> , 410 So.2d 506 (Fla. 1982)	4,5,8,10
<u>Goode v. Wainwright</u> , 704 F.2d 593, (11th Cir. 1983)	3,5,6,9
<u>Lockett v. Ohio</u> , 438 U.S. 586 (1978)	12
<u>Maggio v. Fulford</u> , ___ U.S. ___, 76 L.Ed.2d 794 (1983)	6,7
<u>Marshall v. Lonberger</u> , ___ U.S. ___, 74 L.Ed. 2d 646 (1983)	6
<u>Miller v. Florida</u> , 373 So.2d 882 (Fla. 1979)	4,7,9,10
<u>Moore v. Balkcom</u> , No. 81-7418 (11th Cir., Sept. 30, 1983)	12,13
<u>Robinson v. California</u> , 307 U.S. 660 (1962)	11
<u>Sumner v. Mata</u> , 449 U.S. 539 (1981)	5
<u>Zant v. Stephens</u> , ___ U.S. ___, 77 L.Ed.2d 235 (1983)	4,7,8,9,10,12,13
<u>United States v. New York Telephone</u> , 434 U.S. 159, (1977)	12

	Page
Fla. Stat. Ann. §921.141(6)(b)(f)	2
28 U.S.C. §2254(d)	4,5

Other Authorities:

<u>Guiding Capital Sentencing Beyond</u> <u>the Boiler Plate: Mental</u> <u>Disorder as a Mitigating</u> <u>Factor</u> , 66 Geo. L.J. 757 (1978)	11
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RESPONDENT'S BRIEF IN OPPOSITION

STATEMENT OF THE CASE

The respondent Arthur F. Goode escaped from a mental hospital in Maryland in February, 1976 and made his way to Florida where he sexually molested and strangled a ten-year-old boy. Respondent, who was twenty-two years of age at the time of this offense, had exhibited evidence of emotional and psychological disturbance since infancy, and had been under psychiatric treatment almost constantly since the age of five. After the killing in Florida, respondent was arrested in another state and eventually returned to Florida, where he gave a full confession and demanded to be executed for his crime.

Prior to his trial, at which he was permitted to act as his own co-counsel, respondent was examined by four psychiatrists, all of who found him to be mentally ill.¹ Goode v. State, 365 So.2d 381, 382 (Fla. 1978). Following a judicial determination that respondent was competent to stand trial, a trial took place

¹Three of the four psychiatrists were of the opinion that respondent's mental illness did not render him incompetent to stand trial. A fourth psychiatrist stated that respondent suffered from latent schizophrenia and that he was not competent to stand trial. Trial Record (hereinafter designated as "R.") 886, 897-8, 920, 854.

during which, acting as his own co-counsel, he took the witness stand to describe his crime in the most lurid possible terms, and to urge the jury and trial judge to sentence him to death. His efforts to this end included a midtrial courthouse news conference at which he called for his own execution.

Following a verdict of guilty, a sentencing hearing was held at which the three court-appointed psychiatrists who had previously found respondent competent to stand trial appeared as court's witnesses to give further testimony relating to his mental condition. Although these psychiatrists differed as to whether respondent's mental illness at the time of the offense was so extreme as to bring him within either of the two statutory mitigating circumstances relating to mental illness set forth in Fla. Stat. Ann. §921.141(6)(b) and -(f), all of the psychiatric testimony before the court was to the effect that respondent had been suffering from a mental disorder at the time that he committed this bizarre crime.²

²At a pre-trial hearing, the judge had heard the testimony of Dr. George W. Barnard, who stated that respondent appeared to be suffering from latent schizophrenia. Drawing on an exhaustive 187-page history and evaluation of respondent prepared a year before his trial by Maryland state authorities, Dr. Barnard described respondent as having been a possibly premature infant who at the age of only six months began exhibiting irrational terror in response to events as commonplace as leaves blowing in the wind. As an infant, he was prone to prolonged seizures of panic which could last as long as thirty minutes. Hyperactivity was noted at age three or four. Respondent received some form of psychological treatment for almost his entire life, and as a teenager was inappropriately treated as mentally retarded. Tr. 862-886.

At respondent's sentencing hearing, Dr. Tin Myo Than described him as suffering from a personality disorder and from pedophilia. He characterized respondent as having "no capacity to postpone his needs" for gratification, and as having overcompensated for "his inadequate and very poor self-esteem" so as to produce grandiosity in his thinking. While respondent was capable of thinking about his own needs as an adult, "with regards to... others' needs his ability is like that of a child." Accordingly, Dr. Than found that respondent met both of Florida's statutory criteria for mental mitigating circumstances, in that he was "under the influence of extreme mental or emotional disturbance at the time the felony was committed," and that his capacity...to appreciate the criminality of his conduct...or to conform his conduct to the requirements of the law were substantially impaired." Tr. 1115, 1117-20, 1123.

Dr. Robert J. Wald's diagnosis was substantially similar to Dr. Than's, but he concluded that although respondent was "disturbed," he did not believe that "the disturbance was so extreme as to fit under [the statutory] category of...extreme mental or emotional disturbance" because "extreme mental or emotional disturbance to me implies major mental illness." Tr. 1137. Dr. Mordecai Haber also found respondent to be mentally ill, and Florida's statutory

The jury recommended and the trial judge imposed a sentence of death. In the trial judge's sentencing order, the evidence of respondent's mental illness then before the court does not appear as a mitigating circumstance.³ However, in the concluding portion of his sentencing order the judge did make reference to respondent's mental condition. Referring to the suggestion of respondent's former defense counsel that respondent's extensive and well-documented psychiatric history would provide medical science with a unique opportunity to increase its understanding of the sexual abuse of children by studying respondent in prison, the trial judge stated:

...The question of why should this man be executed for what he has done is a question that the Court has wrestled with for several days and has carefully considered the circumstances, but I have been able to answer to myself why I should invoke the awesome punishment of death. Could not something be learned from Arthur? Am I not doing as I have seen and heard many do and merely so outraged by the activities that he has done that possibly my reason and judgment are blurred? I believe not.

If organized society is to exist with the compassion and love that we all espouse, there comes a point where we must terminate that, and there are certain cases and certain times when we can no longer help, we can no longer rehabilitate and there are certain people, and Arthur Goode is one of them, that's actions demand that society respond and all we can do is exterminate.

Philosophically I believe that in certain limited instances we should do that. In this particular case that is my opinion, and that is my order, and the only answer I know that will once and for all guarantee society, as least as it relates to this man, is that he will never again kill, maim, torture or harm another human being, and as you said in trial, Arthur, maybe I don't know who we blame. God forgive you of those desires or something in your environment that has made you have them, and whoever is to blame is beyond the power of this Court.

Goode v. Wainwright, 704 F.2d 593, 594 (11th Cir. 1983) (emphasis added).

Three years after respondent's trial and sentencing, the Supreme Court of Florida vacated a death sentence imposed by

³The judge's order reflects that he found two statutory mitigating circumstances to be present in respondent's case--his age (22), and the fact he had no significant history of criminal activity prior to the date of the murder for which he was being sentenced. Tr. 1275-76.

the same trial judge in an unrelated case on the grounds that Judge Shearer had improperly considered the defendant's dangerous mental illness, combined with the possibility of his eventual parole, as an aggravating circumstance justifying a sentence of death. Miller v. State, 373 So.2d 882 (Fla. 1979). After Miller was decided, respondent brought a petition for writ of habeas corpus in state court alleging that Judge Shearer's sentencing order in respondent's case contained the same error as that committed in Miller. The state supreme court declined, however, to apply its holding in Miller to vacate respondent's death sentence, ruling that Judge Shearer's concluding remarks in respondent's case were not part of the weighing process involved in the actual determination of sentence, but rather were intended to "explain... why the result of [the judge's] weighing process was proper." Goode v. Wainwright, 410 So.2d 506, 509 (Fla. 1982).

Respondent subsequently sought habeas corpus relief in the federal district court, where he alleged, inter alia, that his rights under the Eighth and Fourteenth Amendments had been violated by the trial judge's reliance on his future dangerousness as a nonstatutory aggravating circumstance. The United States Court of Appeals for the Eleventh Circuit reversed the district court's denial of habeas corpus relief on this ground, holding 1) that the Florida Supreme Court's conclusion that the so-called "recurrence factor" had not actually formed a basis for respondent's death sentence was not fairly supported by the record, and 2) that under the circumstances of this case, the trial judge's consideration of this nonstatutory aggravating circumstance violated the United States Constitution. The state of Florida now asserts that the first of these holdings was improper under the limitations imposed on the federal courts' power to review state court findings of fact by 28 U.S.C. §2254(d), and that the second is in conflict with this Court's subsequent decisions in Zant v. Stephens, ___ U.S. ___, 77 L.Ed 2d 235 (1983) and Barclay v. Florida, ___ U.S. ___, 77 L.Ed.2d 1134 (1983). For the reasons that follow, respondent submits that under the particular

facts of his case, these contentions are erroneous and do not warrant granting the writ sought by petitioner.

WHY THE WRIT SHOULD BE DENIED

I.

The Court of Appeals' determination that the trial judge's explanation of the death sentence which he imposed on respondent fairly reflected his actual motivation was proper under 28 U.S.C. §2254(d).

As a threshold matter, the state of Florida alleges that the Court of Appeals should have been precluded from addressing the substantive constitutional issue in this case by the "finding" of the Florida Supreme Court that the trial judge did not actually consider respondent's future dangerousness at all in imposing sentence. Assuming without deciding that the state supreme court's reinterpretation of this portion of the trial judge's sentencing order was a finding of fact within the meaning of 28 U.S.C. §2254(d), the Court of Appeals determined that the state supreme court's conclusion was not fairly supported by the record, and thus not entitled to a presumption of correctness under §2254(d). In accordance with the requirements of Sumner v. Mata, 449 U.S. 539 (1981), the court carefully explained the basis for this conclusion.

The Florida court found that the statements by the trial judge [concerning the recurrence factor] merely 'explained why the result of his weighing process was proper.' Goode v. Wainwright, 410 So.2d at 509... The Florida court's reason reveals the fallacy of its conclusion. When the sentencing judge explained that the "result of his weighing process was proper" because of the recurrence factor, it is apparent that the recurrence factor had in fact been considered. It is logically impossible to say that the death penalty is proper because of the recurrence factor and to simultaneously say that the factor was not considered.

704 F.2d at 605. The court of appeals went on to consider two other rationalizations offered by the state of Florida to buttress the state court's position--that the trial judge's remarks were mere generalizations about capital sentencing policy, and that these statements could not have been part of the sentencing process because they followed his listing of aggravating and

mitigating circumstances and his announcement of what the sentence would be. With respect to each of these arguments, the court of appeals pointed to portions of the trial judge's order which plainly reflected that he was speaking with reference to the specific case before him, and that the nonstatutory "recurrence" factor had actually persuaded him during the "several days that the Court has wrestled with" the question of respondent's sentence that a sentence of death was proper. Id. at 606. The court of appeals went on to note that the the Florida Supreme Court had found Judge Shearer to have erroneously considered the same improper "recurrence factor" in an earlier capital case, and that in this case the judge had stated on the record that he did not consider himself to be limited to consideration of statutory aggravating circumstances. Id. at 607. Given these statements, made by the trial judge himself in the course of sentencing respondent to death, the court of appeals was plainly correct in its determination that the state court's assertion that Judge Shearer had not considered nonstatutory aggravating factors in sentencing respondent was not fairly supported by the record. 28 U.S.C. §2254(D)(8).⁴

Petitioner's reliance on Marshall v. Lonberger, ___ U.S. ___, 74 L.Ed.2d 646 (1983) and Maggio v. Fulford, ___ U.S. ___, 76 L.Ed.2d 794 (1983) is misplaced. In both Lonberger and Fulford, federal courts had substituted their own judgment for those of the state courts on factual questions--specifically the credibility of Lonberger's claim that a prior guilty plea had been unintelligently entered, and the weight to be accorded to evidence

⁴The state's suggestion that the actual sentencing process consisted of no more than the judge's recitation of aggravating and mitigating circumstances is also inconsistent with Florida's three-step sentencing procedure, which requires the sentencing judge to make a final determination of the appropriateness of the death penalty even after he has determined that the statutory aggravating circumstances outweigh the statutory mitigating circumstances. Barclay v. Florida, ___ U.S. ___, 77 L.Ed.2d 1134, 1150-52 (1983) (Stevens, J., concurring). The fact that the trial judge had already recited the statutory aggravating and mitigating factors in this case before referring to the "recurrence factor" reflects no more than that this nonstatutory aggravating factor entered the sentencer's decision-making process at the third and final stage of the sentencing procedure.

competency to stand trial in Fulford. In both cases, the findings of the state courts were abundantly supported by the testimony and evidence in the record, and thus were plainly entitled to a presumption of correctness under 28 U.S.C. §2254(d). In contrast, the primary or historical facts are those stated in the trial judge's sentencing order. The court of appeals not only presumed these facts to be correct, but accepted them as the basis of its judgment. The Eleventh Circuit rejected the Florida Supreme court's interpretation of the trial judge's sentencing order, an interpretation which, as it correctly stated, was supported neither by the sentencing order itself nor by common sense. Even if one were to accept the dubious proposition that the state court's conclusion was one of fact rather than of law, cf. Cuyler v. Sullivan, 446 U.S. 335, 341-2, the court of appeals properly recognized and discharged its obligation under 28 U.S.C. §2254 to make its own determination of the matter without according any presumption of correctness to the state court's opinion. The fallacy of petitioner's present claim that this conclusion of the court of appeals reflects "nothing more than an argumentative equivalence" with the state supreme court, Petition for Writ of Habeas Corpus at 17, becomes even more clear when placed in the context of this Court's recent opinion in Zant v. Stephens, 462 U.S. 948, 77 L.Ed.2d 235 (1983). In Stephens, the Court, in holding a death sentence despite the presence of one invalid aggravating circumstance stressed that

Georgia has not, for example, sought to characterize the display of a red flag, the expression of unpopular political views, or the request for a trial by jury, as an aggravating circumstance. Nor has Georgia attached the "aggravating" label to factors that are constitutionally impermissible or totally irrelevant to the sentencing process, such as for example the race, religion, or political affiliation of the defendant, or to conduct that actually should militate in favor of a lesser penalty, such as perhaps the defendant's mental illness. Cf. Miller v. Florida, 373 So.2d 882, 885-886 (Fla. 1979). If the aggravating circumstance at issue in this case had been invalid for reasons such as these, due process of law would require that the jury's decision to impose death be set aside.

77 L.Ed.2d at 255 (citations omitted). If, in this case,

the trial judge's closing remarks had included a statement to the effect that he had decided not to accept the plea of respondent's former counsel because the judge believed "philosophically" that persons of respondent's race, religion or political beliefs ought to be "exterminate[d]," no court would pause to consider whether the judge had actually considered impermissible factors in passing sentence. The constitutional restrictions on capital sentencing criteria which this Court recognized in Stephens would have little meaning indeed if such impermissible considerations as race or religion could be cited by a sentencing judge to explain "why the result of his weighing process was proper," Goode v. Wainwright, 410 So.2d 506, 509 (Fla. 1982), so long as he did not also list these considerations in his formal recitation of aggravating and mitigating factors. Unless we are to indulge the bizarre supposition that a Florida trial judge would impose a sentence of death even though he did not believe it to be proper, we must assume that any judge's explanation of why a given death sentence was proper reveals at least part of his reasons for imposing it. Under such circumstances, any subsequent conclusion to the contrary by a state court would be a legal determination to which no presumption of correctness would attach under 28 U.S.C. §2254(d). And to the extent that such a conclusion is to be deemed a finding of fact, it would be unsupported by the record of the sentencing hearing itself.

The question remaining, given the correctness of the court of appeals' conclusion that the "recurrence factor" was in fact considered by the sentencing judge, is whether respondent's federal constitutional rights were violated thereby. Respondent does not claim that his is so stark a case of discriminatory sentencing as would be presented by the hypothetical set forth above in which a judge cites the defendant's race or political or religious beliefs in explaining his decision to impose a death sentence. But for the reasons that follow, respondent submits that the improper aggravating circumstance considered by the trial judge in this case is of indeed of a type to which

the Court referred in Stephens v. Zant as invalidating any death sentence as a matter of federal constitutional law.

II.

Habeas corpus relief was properly granted because the trial court's sentencing order reveals that respondent was sentenced to death at least in part on the basis of evidence that should have been given weight as a mitigating circumstance--namely, his mental illness.

The improper aggravating circumstance relied on by Judge Shearer in this case, like the identical circumstance erroneously relied upon by the same judge in Miller v. State, amounted to constitutional error of the sort to which this Court referred in Zant v. Stephens when it suggested that any death sentence might be invalid when the sentencer has attached the "'aggravating' label...to conduct that actually should militate in favor of a lesser penalty, such as perhaps the defendant's mental illness. Cf. Miller v. Florida, 373 So.2d 882, 885-886 (Fla. 1979)." 77 L.Ed2d at 885. While Judge Shearer's references to what the court of appeals labelled "the recurrence factor" did not refer expressly to the abundant evidence in the record of respondent's mental and emotional disturbance, there can be little doubt but that this "recurrence factor" was in effect the judge's assessment of the future dangerousness of respondent's mental condition. This interpretation is compelled by the trial record, which tended to establish that both respondent's crimes and the prospect of their recurrence were the culmination of a life of emotional disturbance and the product of the mental illness of pedophilia. And this interpretation is further compelled by the conclusion of the judge's sentencing order itself:

[M]aybe I don't know who we blame. God forgive you of those desires or something in your environment that has made you have them, and whoever is to blame is beyond the power of this Court.

704 F.2d at 604. In these remarks, the trial judge recognized both that respondent's crimes were a product of of his abnormal

mental condition, and that this condition was in turn a product of respondent's environment, an environment for which respondent could simply not be held responsible. What is remarkable about this portion of the trial judge's order is that it appears not as a statement of mitigating circumstances, but as an explanation for why a sentence of death was proper. See Goode v. Wainwright, 410 So.2d 506, 509 (Fla. 1982).

This case cannot, therefore, be viewed as one in which the sentencer considered mitigating evidence of mental illness, but then decided that this evidence should not be accorded substantial weight in the case before him. Rather, the trial judge's order makes clear that, just as in Miller v. State, 373 So.2d 882 Fla. 1982), the abundant evidence of respondent's mental abnormalities were accorded considerable and perhaps even decisive weight in the sentencing process--but as an aggravating rather than a mitigating circumstance.

It should be noted that this interpretation of the trial judge's order is not inconsistent with that of the Florida Supreme Court. The sole point of distinction offered by the state court between this case and Miller v. State, supra, is its unsupported and erroneous assertion that the reasons offered by Judge Shearer to indicate "why the result of his weighing process was proper" could not have played any part in his sentencing decision. The state court did not, however, suggest that Miller would not have controlled this case had Judge Shearer's consideration of the "recurrence factor" been part of the weighing process. Goode v. Wainwright, 410 So.2d 506, 509 (Fla. 1982).

Because the court of appeals correctly determined that the considerations referred to in the concluding portion of Judge Shearer's sentencing order did form part of the sentencing decision, Miller should have controlled this case. Moreover, as Zant v. Stephens suggests, the principle of Miller that a defendant's mental illness may not be considered as an aggravating circumstance is constitutionally compelled, and provides a sufficient basis for the judgment below.

That mental illness should be considered as a reason not to impose the death penalty rather than as a reason to impose it is a concept on which the laws of virtually every state retaining capital punishment are in agreement. This almost unanimous consensus among American jurisdictions has roots in Anglo-American jurisprudence which reach back to the Middle Ages. See Liebman and Shepard, Guiding Capital Sentencing Beyond the Boiler Plate: Mental Disorder as a Mitigating Factor, 66 Geo. L.J. 757, 791-94 (1978), and are "objective indicia that reflect the public attitude" upon which any Eighth Amendment analysis must in large measure rest. Gregg v. Georgia, 428 U.S. 153, 173 (1976); see also Coker v. Georgia, 433 U.S. 584, 592 (1977). The basis of this view of mental illness as a mitigating rather than aggravating factor is to be found in our society's recognition that mental illness lessens the degree to which a criminal act was fully the product of the defendant's free and unfettered choice, and thus lessens the moral culpability of the mentally ill defendant even where it does not fully remove it. Cf. Enmund v. Florida, ___ U.S. ___, 102 S.Ct. 3377 (1982). The Eighth Amendment does not permit the meting out of criminal penalties on the basis of the defendant's status or condition, no matter how socially harmful that status or condition may be. Robinson v. California, 370 U.S. 660 (1962). While these Eighth Amendment principles do not, of course, operate as an absolute bar to the imposition of capital punishment upon a mentally ill defendant, they do prohibit the carrying out of any death sentence which was imposed even in part because of the defendant's mental illness rather than despite it.

Respondent recognizes that under some statutory capital sentencing schemes, it might well be permissible to consider a mentally ill defendant's possible future dangerousness as an aggravating circumstance, so long as the defendant's diminished personal responsibility resulting from his mental illness was at the same time considered as mitigating circumstance, and accorded such weight as the sentencing authority deemed it should

have. But that is not what happened in this case. Here, the trial judge obviously credited the evidence of respondent's mental illness, but gave it weight solely as an aggravating circumstance while failing to recognize that it should be accorded any mitigating effect. Since the trial judge's sentencing order reflects that respondent's mental illness was considered only as an aggravating circumstance justifying imposition of a sentence of death, the death sentence which resulted may not be carried out without violating the Eighth Amendment. Lockett v. Ohio, 438 U.S. 586 (1978), Eddings v. Oklahoma, 455 U.S. 104 (1982). Because this case was decided shortly before the Court's decisions in Zant v. Stephens, ___ U.S. ___, 77 L.Ed.2d 235 (1983) and Barclay v. Florida, ___ U.S. ___, 77 L.Ed.2d 1134 (1983), the opinion of the court of appeals is of course not framed in terms of the holdings of those cases. For the reasons set forth here, respondent submits that the court of appeals nevertheless reached a correct result, and that the record does not bear out petitioner's claim that the judgment below is in conflict with either Stephens or Barclay. This factually unique case presents no issue of such general importance as to warrant the granting of a writ of certiorari, and since the judgment of the court of appeals is consistent with the subsequent decisions of this Court and compelled by well-settled constitutional principles, the granting of the writ is neither necessary nor appropriate. Cf. United States v. New York Telephone, 434 U.S. 159, 166 n.8 (1977).


Respondent nevertheless recognizes that because the court of appeals did not pass on the precise argument now offered by him in support of the judgment below, the Court may wish to remand this case to the court of appeals for reconsideration in light of Stephens and Barclay. Respondent would note that that court has already on at least one occasion granted rehearing in light of Stephens and Barclay and reversed a prior ruling that habeas corpus relief should be granted due to consideration of a nonstatutory aggravating circumstance. Moore v. Balkcom,

No. 81-7418 (11th Cir., Sept. 30, 1983).⁵ Despite petitioner's unfounded claim that the granting of habeas corpus petitions from death-sentenced inmates "has become almost customary" for the court of appeals, Pet. for Writ of Certiorari at 7, that court is obviously entirely able and willing to undertake any reconsideration of its prior opinion as may appear to be necessary in view of the complex and unique facts of this case and the intervening decisions in Stephens and Barclay.

CONCLUSION

The writ should be denied.

Respectfully submitted,


WILBUR C. SMITH, III
SMITH & RINGSMUTH
Post Office Box 2446
Fort Myers, Florida 33902-2446
(813) 332-2686

COUNSEL FOR RESPONDENT

October 10, 1983.

⁵In its supplemental brief filed in this Court two weeks ago, petitioner cited the court of appeals' now-vacated opinion in Moore as evidence of the need for action by this Court in the present case. Supplemental Brief of Petitioner at 5.

CERTIFICATE OF SERVICE

I hereby certify that I am a member of the bar of the Supreme Court of the United States and that I served Respondent's Brief in Opposition to Petition for Writ of Certiorari on petitioner by placing a copy in the United States mail, first class mail, postage prepaid, addressed as follows:

The Honorable Charles Corcor, Jr.
Assistant Attorney General
Park Trammell Building
1313 Tampa Street, Suite 804
Tampa, Florida 33602

All parties required to be served have been served.
Done this 11th day of October, 1983.



WILBUR C. SMITH, III

SMITH & RINGSMUTH
Attorneys for Respondent
Post Office Box 2446
Fort Myers, Florida 33902
(813) 332-2686

MOTION FILED
OCT 12 1983

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LOUIE L. WAINWRIGHT, Secretary,
Florida Department of Offender
Rehabilitation,

Petitioner,


vs.

ARTHUR FREDERICK GOODE, III,

Respondent.

MOTION TO PROCEED IN FORMA PAUPERIS

The respondent, ARTHUR F. GOODE, III, by his undersigned counsel, asks leave to file the attached Brief in Opposition to Petition for Writ of Certiorari without prepayment of costs and to proceed in forma pauperis pursuant to Rule 46. Counsel has not yet received an affidavit from the respondent, who is presently incarcerated at Florida State Penitentiary, Starke, Florida. Mr. Goode's affidavit in support of this Motion will be forwarded to the Court immediately upon receipt. (Find attached previous Order Granting Leave to Proceed in Forma Pauperis in District Court.)


WILBUR C. SMITH, III

SMITH & RINGSMUTH
Attorneys for Respondent
Post Office Box 2446
Fort Myers, Florida 33902
(813) 332-2686

FEB 22 8 34 AM '82

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
TAMPA, FLORIDA

ARTHUR F. GOODE, III,

Petitioner,

vs.

LOUIE L. WAINWRIGHT, as
Secretary of Florida
Department of Offender
Rehabilitation, et al.,
Respondent.

Civil Action No.

82-23

CIV-F+M-H

ORDER GRANTING LEAVE TO PROCEED
IN FORMA PAUPERIS IN DISTRICT COURT

The verified Petition of ARTHUR F. GOODE, III, for a Writ of Habeas Corpus and his motion for leave to proceed in forma pauperis having been presented to the Court together with an affidavit pursuant to 28 U.S.C. §1915 (1964), and it appearing from the affidavit the Petitioner is a person authorized by §1915 to proceed in forma pauperis, it is

ORDERED that Petitioner be and hereby is granted leave to proceed in this Court without prepayment of fees or costs or security therefor.

Dated: February 19, 1982.

Samuel H. Hoken

JUDGE,
UNITED STATES DISTRICT COURT

RECEIVED

OCT 19 1983

OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 83-131

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1983

LOUIE L. WAINWRIGHT, Secretary,
Florida Department of Offender
Rehabilitation,

Petitioner,

-against-

ARTHUR FREDERICK GOODE, III,

Respondent.

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF

)
) ss.:
)

I, ARTHUR FREDERICK GOODE, III, being duly sworn, depose and say, in support of my motion for leave to proceed without being required to prepay costs or fees and to proceed in forma pauperis:

1. I am the respondent in the above-captioned action.
2. Because of my poverty I am unable to pay the costs of said cause; I own no real or personal property; I am incarcerated and receive no income from earnings.

3. I am unable to give security for said cause.

4. Counsel is serving on my behalf without remuneration.

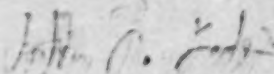
At trial and on appeal, lawyers were appointed to represent me because I was indigent.

5. I believe that I am entitled to redress.

6. The nature of said cause is briefly stated as follows:

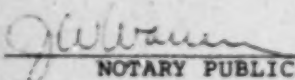
I was convicted of first-degree murder in the Circuit Court of Lee County, a trial court of the State of Florida, and was sentenced to death. I am being held at the Florida State Prison

Starke, Florida. I believe that errors were committed during the course of my trial in violation of my constitutional rights and that my conviction and death sentence were imposed upon me in violation of my constitutional rights.



ARTHUR FREDERICK GOODE, III

Sworn to before me this
11 day of October, 1983.


NOTARY PUBLIC

NOTARY PUBLIC, STATE OF FLORIDA
My Commission Expires Oct. 4, 1988

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1983

LOUIE L. WAINWRIGHT, Secretary,
Florida Department of Offender
Rehabilitation,

Petitioner,

vs.

ARTHUR FREDERICK GOODE, III,

Respondent.

AFFIDAVIT

STATE OF FLORIDA)
) §
COUNTY OF LEE)

WILBUR C. SMITH, III, being duly sworn, states:

1. I am an attorney for ARTHUR FREDERICK GOODE, III, the respondent in the above-captioned action, and I make this affidavit in support of Mr. Goode's Motion for Leave to Proceed in Forma Pauperis. My representation of Mr. Goode is without remuneration.

2. Mr. Goode is presently in the custody of the State of Florida and is not immediately available to sign an in forma pauperis affidavit. Such an affidavit has been sent to Mr. Goode by me and will be forwarded to the Court immediately upon receipt. A copy of the affidavit to be signed by Mr. Goode is attached hereto.

3. Counsel was appointed to represent Mr. Goode at his trial and on appeal.

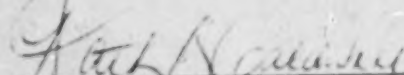
4. I am informed and believe that because of his poverty, Mr. Goode is unable to pay the costs of this cause or to give security for same.

5. I believe that Mr. Goode is entitled to redress in this action.


WILBUR C. SMITH, III

Sworn to before me this

11th day of October, 1983.


Notary Public

My Commission expires:

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES DEC 3 1983
BONDED THRU GENERAL INS UNDERWRITERS

IN THE

LOUIE L. WAINWRIGHT, Secretary,
Florida Department of Offender
Rehabilitation,

Petitioner,

-against-

ARTHUR FREDERICK GOODE, III,

Respondent.

AFFIDAVIT

STATE OF FLORIDA

,

SS. :

COUNTY OF

;

I, ARTHUR FREDERICK GOODE, III, being duly sworn, depose and say, in support of my motion for leave to proceed without being required to prepay costs or fees and to proceed in forma pauperis:

1. I am the respondent in the above-captioned action.
2. Because of my poverty I am unable to pay the costs of said cause; I own no real or personal property; I am incarcerated and receive no income from earnings.

3. I am unable to give security for said cause.

4. Counsel is serving on my behalf without remuneration.

At trial and on appeal, lawyers were appointed to represent me because I was indigent.

5. I believe that I am entitled to redress.

6. The nature of said cause is briefly stated as follows:

I was convicted of first-degree murder in the Circuit Court of Lee County, a trial court of the State of Florida, and was sentenced to death. I am being held at the Florida State Prison

Starke, Florida. I believe that errors were committed during the course of my trial in violation of my constitutional rights and that my conviction and death sentence were imposed upon me in violation of my constitutional rights.

ARTHUR FREDERICK GOODE, III

Sworn to before me this
day of October, 1983.

NOTARY PUBLIC